

# The Federal Update for August 12, 2022

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

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## Legislation and Guidance

### CDC Updates COVID-19 Schools Guidance, Loosening Recommendations

The Centers for Disease Control (CDC) updated its guidance on COVID-19 mitigation for schools on Thursday, loosening prior recommendations. The updated guidance eliminates the previous “test-to-stay” recommendation from the agency, which suggested allowing individuals who had a close contact with COVID-19 to remain in school as long as they continuously tested negative and were symptom free.

The CDC no longer recommends that students or staff who have been exposed to COVID-19 quarantine. The updated guidance only suggests quarantine for those individuals who have tested positive. Exposed students or staff should wear a mask for 10 days and get tested. The updated guidance also no longer recommends screening testing for asymptomatic students and staff, except for high-risk events or times of the year, such as large indoor events like prom or after schools return from holiday breaks, in places that have high COVID-19 community levels. The CDC also eliminated the recommendation to group students throughout the day to reduce their contact with others.

The guidance does keep in place recommendations for universal masking in areas of the country with high community levels of COVID-19; however, most schools across the country have eliminated masking requirements.

[The updated CDC guidance is available here](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-childcare-guidance.html).

Resources:

Donna St. George, “CDC eases school guidance on quarantines, testing, screening,” *Washington Post*, August 11, 2022.

Author: KSC

## News

### Charter Advocates Sue ED Over New CSGP Priorities

A group of Michigan charter schools and an Ohio charter school authorizer have sued the U.S. Department of Education (ED) over its newly finalized priorities for the federal Charter School Grant Program (CSGP).

The new priorities would limit the ability of schools to receive CSGP funds when they could potentially worsen school segregation or inhibit desegregation plans. New schools would be encouraged to partner with school districts and would have to document community demand for charter schools. Additionally, they would have to disclose information about their relationships with for-profit management companies.

The groups argue that the priorities exceed the authority delegated to ED by Congress since they go beyond the spare instructions laid out in the statute. They also say that the rules inhibit charter school growth and take away parent choice in areas where local public schools are not oversubscribed or in school districts that are not racially diverse. Additionally, they express concern that school districts and others will be able to suppress competition and charter growth by refusing to partner with charters—one of the issues raised by commenters on the proposed rule.

In a novel argument, the plaintiffs say that these priorities were not properly promulgated under the Administrative Procedures Act, not just because the comment window was short and they felt that their complaints were not adequately addressed, but because they were signed by acting assistant secretary Ruth Ryder. The complaint suggests that this is an improper delegation of authority to an unelected, non-Senate-confirmable official, and that the Secretary or the President himself must sign off—or at least provide “appropriate oversight”—on rules of similar significance. If this argument succeeds, it could dramatically slow down the rulemaking process by requiring that the President or high-level political appointees actively participate in the rulemaking process throughout. The plaintiffs also request a jury trial—perhaps believing that jurors who include parents of school-age children might be more sympathetic to their arguments.

In defending the new rules, the Biden administration has asserted that it intends to protect local public schools and ensure that charters are there for the long term. Supporters also say that the new priorities protect communities from districts that poach high-performing students and from for-profit companies that draw startup funds but never open schools, or open them only to close them soon after. ED has insisted that high-quality schools which increase educational opportunities will not be at a disadvantage, no matter their setting. Finally, this is only applicable to one competitive grant and does not impact the ability of charter schools to receive State or local start-up dollars, or regular funding under Title I and other formula programs.

The [lawsuit is available here](https://pacificlegal.org/wp-content/uploads/2022/08/Michigan-Assoc.-of-Public-School-Academies-2022.08.08-PLF-Complaint.pdf).

Author: JCM

### Senate Confirms Nasser Paydar for OPE

On Thursday, August 4, the U.S. Senate confirmed Dr. Nasser Paydar as assistant secretary for the U.S. Department of Education’s Office of Postsecondary Education (OPE). A doctor in mechanical engineering, he currently serves as the fifth chancellor of the Indiana University-Purdue University and executive vice-president of Indiana University. Secretary of Education Miguel Cardona issued a statement congratulating Dr. Paydar:

It is with great excitement that I congratulate Dr. Nasser Paydar on his confirmation as assistant secretary for postsecondary education.  Dr. Paydar brings to the U.S. Department of Education more than three-and-a-half decades of experience as a university leader and educator, during which time he has demonstrated an unwavering commitment to creating accessible pathways to college and careers for students of all ages, abilities, and backgrounds.  I look forward to welcoming him aboard, and most importantly, working together to advance the Biden-Harris administration's efforts to build a more inclusive, equitable, and affordable higher education system than ever before.

As assistant secretary for OPE, Dr. Paydar will be responsible for improving postsecondary education graduation rates, making higher education more accessible to students, administering grant programs that improve academic quality, supporting first-generation students, and developing postsecondary policy, such as federal student financial assistance programs.

His confirmation comes at a time when higher education policy is garnering significant attention. For instance, courts are currently issuing rulings on whether students are entitled to refunds from colleges and universities that continued charging the same tuition rates after transitioning to online classes at the height of the pandemic. And student loan borrowers are waiting for the Biden administration to decide whether it will cancel all or pardon some student loans before the current loan payment and interest moratorium expires on August 31.

Resources:

Meghan Brink, “Paydar Confirmed as Assistant Secretary for Postsecondary Education,” *Inside Higher Ed*, August 8, 2022.

Author: MPM

### Advocates Urge Biden Administration to Release Title IX Athletics Rule

The National Women’s Law Center and the Women’s Sports Foundation sent a letter to the President on Thursday urging the administration to “swiftly” release the planned proposed rule on Title IX and athletics. The U.S. Department of Education (ED) issued a notice of proposed rulemaking in June addressing requirements surrounding Title IX and sexual violence, and stated that the agency planned to publish a second proposed rule that targets compliance with Title IX in athletics.

As many States have passed or have pending legislation restricting the participation of transgender youth in athletics based on their gender identity, advocacy groups are urging the administration to issue the planned proposed rule as soon as possible and to have the rule finalized by the beginning of next year. The groups are requesting that the administration finalize the Title IX proposed rule on sexual violence and a proposed rule on Title IX and athletics at the same time.

“We are writing to implore your administration to swiftly release a Title IX athletics rule that would ensure all students, including transgender, non-binary, and intersex students, can participate fully and equally in school sports,” the letter states.

The groups also ask the administration to make clear that the proposed rule would preempt any State laws that restrict transgender, intersex, and non-binary students from participating in sports based on their gender identity. The letter says: “In short, the administration should make it clear to state lawmakers and decision makers that there will be consequences for effectuating sports bans and other restrictions on the ability of students to play sports simply because of their gender identity—including the potential loss of federal funding.”

While the administration does plan to release a proposed rule on Title IX and athletics that is expected to require schools to allow transgender students to participate based on gender identity, ED has not indicated precisely when the proposed rule will be released.

[The full letter is available here](https://nwlc.org/wp-content/uploads/2022/08/WSF-Letter-8.10-final-version.pdf).

Author: KSC

### ED OIG Releases 5-Year Strategic Plan

The U.S. Department of Education’s (ED’s) Office of Inspector General (OIG) released information on its strategic plan for fiscal years 2023-2028 in a report published this month. The report identifies four goals that OIG will focus on over the next five years.

The strategic plan goals are 1) to maximize value to stakeholders; 2) combat program fraud and cyber threats; 3) invest in the OIG workforce and workplace; and 4) innovate and collaborate. Each goal is supported by four strategies designed to help OIG meet these goals. Under goal one, the first strategy OIG mentions is to focus work on high-risk and high-impact areas by assessing risk and significance to select discretionary projects that have the greatest impact and usefulness to stakeholders. Other strategies include conducting objective and timely investigations to help combat program fraud and cyber threats and leverage data and technology to help OIG achieve its goal to innovate and collaborate.

The report also highlights the 17 OIG office locations, representing an expansion over the last few years, and OIG’s structure, which consists of six components—the Immediate Office, Audit Services, Investigation Services, Technology Services, Legal Services, and Management Services.

[A copy of the report can be found here.](https://www2.ed.gov/about/offices/list/oig/misc/strategicplan20232028.pdf)

Author: ASB

## Reports

### GAO Says ED Needs to Improve Outreach on Closed School Discharge

The Government Accountability Office (GAO) issued a report this week that recommends the U.S. Department of Education (ED) improve its outreach to student loan borrowers who may be eligible for a closed school discharge. When a borrower is attending a school that closes prior to the completion of a program, the borrower may be eligible to have their current loans relieved by ED.

In the report, GAO specifically examined whether ED has appropriate and timely outreach to borrowers who may be eligible for this particular type of loan relief. GAO found that ED’s outreach is lacking in complete information and is not conducted in a timely manner, in part because of a delay in ED identifying colleges that have closed. GAO recommends four actions for ED to take regarding outreach to these potentially eligible borrowers:

* Establish strategies to more quickly identify college closures;
* Direct student loan servicers to rely on more frequent ED reports when determining which potentially eligible borrowers to notify;
* Drafting guidance on the specific information to be included in notifications to borrowers about their potential eligibility; and
* Providing additional outreach of potential eligibility to the borrowers most at-risk of falling into delinquency or default on their loans.

ED is reportedly taking steps to address the four recommendations from GAO identified in the report, some of which will be improved with the launch of the Next Gen data reporting system this fall.

[The full report is available here](https://www.gao.gov/assets/gao-22-104403.pdf).

Author: KSC

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